

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF TEXAS
4 SHERMAN DIVISION

5 TEXAS TOP COP SHOP, INC., DOCKET 4:24-CV-478
6 ET AL |
7 VS. | OCTOBER 9, 2024
8 ATTORNEY GENERAL MERRICK | 9:00 A.M.
9 GARLAND, ET AL | SHERMAN, TEXAS

10 VOLUME 1 OF 1, PAGES 1 THROUGH 67

11 REPORTER'S TRANSCRIPT OF MOTION HEARING

12 BEFORE THE HONORABLE AMOS L. MAZZANT, III,
13 UNITED STATES DISTRICT JUDGE

14 FOR THE PLAINTIFFS: CALEB KRUCKENBERG
15 CHRISTIAN CLASE
16 THE CENTER FOR INDIVIDUAL RIGHTS
17 1100 CONNECTICUT AVENUE NW,
18 SUITE 625
19 WASHINGTON, DC 20036

20 FOR THE DEFENDANTS: FAITH LOWRY
21 DEPARTMENT OF JUSTICE - CIVIL
22 1100 L STREET
23 WASHINGTON, DC 20005

24 COURT REPORTER: CHRISTINA L. BICKHAM, CRR, RDR
25 FEDERAL OFFICIAL REPORTER
 101 EAST PECAN
 SHERMAN, TX 75090

26 PROCEEDINGS RECORDED USING MECHANICAL STENOGRAPHY;
27 TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.

1 (Open court, all parties present.)

2 THE COURT: Good morning. Please be seated.

3 We're here in case 4:24-cv-478, *Texas Top Cop*
4 *Shop, et al versus Garland, et al.*

5 And for the Plaintiffs?

6 MR. KRUCKENBERG: Good morning, your Honor. Caleb
7 Kruckenberg for the Plaintiffs. I'm joined by my
8 colleague, Christian Clase. And I'll just note that I'm
9 joined by Russell Straayer, who's one of the named
10 Plaintiffs, and he's at the table beside me.

11 THE COURT: Okay. Very good.

12 And for the Defense?

13 MS. LOWRY: Good morning, your Honor. Faith Lowry
14 for the Defendants.

15 THE COURT: And where did you -- where did y'all
16 come from?

17 MS. LOWRY: I am now down in San Antonio, so it
18 was a short flight up to Love.

19 THE COURT: Not too bad.

20 MR. KRUCKENBERG: And, your Honor, I'm coming from
21 Washington, DC.

22 MR. CLASE: I'm coming from Nashville, Tennessee.

23 THE COURT: Okay. Well, welcome to Sherman. I
24 assume it's your first time here.

25 MS. LOWRY: It is. It's a beautiful courthouse.

1 Happy to be here.

2 THE COURT: Yeah. It's the oldest courthouse
3 being used in the Fifth Circuit, so -- opened in 1907.

4 Well, here's my thoughts, is I have a number of
5 questions, and so we'll start with the Plaintiffs, if you
6 want to take the podium. And I thought I'd ask my
7 questions that I have, and then you can say whatever else
8 you want to say, so -- and I'll do that for both sides.

9 MR. KRUCKENBERG: Yes, your Honor.

10 THE COURT: So are you doing slides or something,
11 or no?

12 MR. KRUCKENBERG: No, your Honor. I just have my
13 notes on my laptop.

14 THE COURT: No, that's fine.

15 So let me start off and ask. You don't explicitly
16 say you're asking for a nationwide injunction and -- but
17 the Government, I think, characterizes that's what you're
18 asking. And so are you asking for a nationwide injunction
19 in terms of what the relief is, or is it just for the
20 parties before the Court?

21 MR. KRUCKENBERG: Your Honor, we are asking -- I
22 think there are sort of two ways to look at it, but we're
23 really only asking for preliminary relief for the parties.
24 And when we say that, we mean the named Plaintiffs and also
25 the associational members of NFIB.

1 had a basis for concluding that the means justify the ends.
2 The necessary and proper test is still going to be the
3 bounds on that power.

4 THE COURT: And then -- and I was going to ask you
5 in the beginning and I didn't ask that, but -- because it
6 was really I think your briefing that indicated or implied
7 that they were seeking a nationwide injunction, which they
8 said they are not.

9 My question, though, for the Government is let's
10 say the Court grants some kind of injunction for these
11 parties. How does that impact anybody else going forward?
12 I mean --

13 MS. LOWRY: I would have two responses, your
14 Honor.

15 I think there are two totally dissimilar
16 categories of Plaintiffs here. You have the sort of
17 individual businesses, and we can even include MSLP there.
18 Then you have NFIB, which everyone agrees is exempt from
19 the CTA already. They do not have to file.

20 Plaintiffs are seeking injunctive relief on behalf
21 of their 300,000 members, which really is nationwide
22 injunctive relief. Those parties are not before the Court.
23 I think they totally defeat the facial challenge here
24 because they demonstrate real business is taking place.
25 There are 300,000 of them who decided to be members in this

1 trade association.

2 So for all practical purposes, the limit that they
3 have offered here before the Court is a concession, and one
4 we welcome, but their brief sought to enjoin the CTA,
5 period, full stop. And if they were granted relief as to
6 NFIB's members who have not even been named or disclosed,
7 that would be effective nationwide relief.

8 I think the -- to your Honor's latter point, that
9 would be a significant harm to the public interest in this
10 case because that would be 300,000 businesses excluded from
11 the reporting requirements -- which, you know, to be
12 effective, there has to be participation. We're talking
13 about excluding unnamed companies in a way that would
14 totally frustrate the goals and aims of the CTA and its
15 compliance standards.

16 THE COURT: Well, but, you know, if the Court
17 would ever -- it gets to the point of saying Congress
18 exceeded their authority, shouldn't there be some kind of
19 relief like that anyways?

20 And there's a mechanism if a Court grants an
21 injunction. The Government can appeal and, you know -- I
22 get it -- i have a lot of appeals go to the Fifth Circuit,
23 and so I'm not -- and then they can determine whether or
24 not I was right or wrong if I grant any kind of relief.

25 But, I mean, it seems to me that the idea that it

1 would thwart the goal of the CTA -- I understand that, but
2 they only get there if -- if the Court is convinced that
3 they have a likelihood of success on the merits is a good
4 one, well, there should be relief, you know.

5 So that's why I asked the question to them,
6 because of what you said in your brief. And I'm going to
7 have them come back and answer this question about although
8 they only asked for the parties, the 300,000 members is a
9 legitimate issue. Is it, in effect, giving nationwide
10 relief in a way? But I'll ask him that question.

11 MS. LOWRY: Yes, your Honor. I mean, I,
12 obviously, acknowledge there are always potential appeal
13 rights. There is a process to go through. We have argued
14 there's no likelihood of success. If you find there is a
15 likelihood of success, we turn to the other elements.

16 We would still argue that the equities favor the
17 Government here versus -- for individual businesses filing
18 their BOI information versus, you know, enjoining duly
19 enacted law of Congress.

20 But I take your Honor's point. If you find that
21 it exceeded the power, you're obviously going to find that
22 the interest the Government has in the policy is decreased.

23 THE COURT: And then if you want to address -- I
24 know he discussed a couple of the constitutional claims.
25 Again, I didn't ask a lot of questions -- although I have

1 Plaintiffs. They have to do something. They're -- they
2 have -- they're looking at the compliance date. And once
3 they file, they have an ongoing obligation to update, to
4 maintain, to -- if any information changes.

5 So I think it is very hard for them to say there's
6 no irreparable harm, assuming this is invalid, which is
7 what this Court has to do when assessing that factor.

8 THE COURT: And then what about -- what's your
9 response on the issue of the 300,000 members? You're not
10 seeking nationwide injunction, but the Government says in
11 practicality you kind of are because the one member has
12 300,000 members. What do you say to that?

13 MR. KRUCKENBERG: Your Honor, I take the
14 conceptual concern with nationwide injunctions applying to
15 nonparties at face value. And assuming that is a problem,
16 that's not a problem this Court has to deal with because we
17 have parties before the Court. And it is a fundamental
18 aspect --

19 THE COURT: Well, that doesn't answer the
20 question, though. I mean --

21 MR. KRUCKENBERG: Yeah.

22 THE COURT: -- is it true that one client has
23 300,000 members that, in effect, would -- or could be --
24 you know, although not called a nationwide injunction, it
25 has that same impact?

1 MR. KRUCKENBERG: Well, it has on the parties
2 before the Court because NFIB is here in a
3 representation -- in a representative capacity for its
4 members, which includes some of the named Plaintiffs but
5 obviously not all of them.

6 I mean, if the United States' position is we have
7 to list them as Plaintiffs to be able to make them parties,
8 I mean, that's just not true. That's not the way our legal
9 system considers multiple Plaintiffs or these sort of
10 complicated cases.

11 And if it's a matter of practicality, we can
12 certainly file a membership list as of the time of the
13 injunction with the Court under seal. I mean, obviously,
14 we have concerns about privacy, and that's part of the
15 lawsuit. But there is a way to deal with that.

16 THE COURT: That's not the concern the Court has.
17 It's -- I'm just trying to determine, although you say
18 you're not asking for a nationwide injunction, could that
19 be the impact if the Court grants you relief to just the
20 Plaintiffs?

21 MR. KRUCKENBERG: I mean, effectively, the members
22 are nationwide, yes. There are members in every state.
23 But they are parties to this case, and they are in front of
24 this Court.

25 And so if the concerns are about the Court's

1 equitable powers, which is what this debate usually centers
2 on, there is no doubt that NFIB's members are before this
3 Court. They are within this Court's jurisdiction. The
4 United States is within this Court's jurisdiction. And so
5 I don't see an issue.

6 THE COURT: And then address the Government's
7 response to the -- looking at the various equities that she
8 asserts side with the Government or weigh with the
9 Government in terms of granting any kind of injunction.

10 MR. KRUCKENBERG: Well -- and, again, I would rely
11 on the Fifth Circuit. I mean, this lives and dies in a lot
12 of ways on the merits because the Fifth Circuit, I think,
13 has been very clear. When we have a regulatory obligation
14 like this, if it's invalid -- the Government has no
15 interest in maintaining invalid law and making people
16 follow an invalid law and incurring costs to do so.

17 And in the preliminary injunction context, I mean,
18 that is the appropriate -- this is the appropriate
19 mechanism. We're saying this law shouldn't take effect.
20 This is a time-out, so you don't have to incur these
21 potentially unlawful compliance obligations and, here,
22 potentially unconstitutional obligations. And so I think
23 the Fifth Circuit has just been very clear on that.

24 THE COURT: And then her argument in terms of --
25 her best argument on the Commerce Clause was substantial

1 And if the Court has no other questions, we'll
2 rest on our briefing.

3 THE COURT: Okay. Very good.

4 Well, thank y'all both for your arguments. I
5 enjoyed those immensely, and I will take the matter under
6 advisement. I understand the time constraints, and I will
7 try to make a decision, you know, as quick as I can.

8 So -- and I will -- well, I don't want to promise
9 anything in terms of a date or anything, but we will work
10 on it diligently and get you an answer in plenty of time.

11 I have issued two nationwide injunctions -- now,
12 the one wasn't my fault. I got a lot of criticism for it
13 by parties because they didn't file their request for
14 injunctive -- not by the parties but by the public years
15 ago. But the motion for injunction came, like, right
16 before the deadline so -- for the rule to go into effect,
17 so it wasn't my fault. But you've brought this in plenty
18 of attention -- plenty of time for the Court to resolve it,
19 and I will get it resolved in plenty of time so --

20 But, otherwise, we'll be in recess. Thank y'all.

21 (Proceedings concluded, 10:31 a.m.)

22 COURT REPORTER'S CERTIFICATION

23 I HEREBY CERTIFY THAT ON THIS DATE, DECEMBER 16,
24 2024, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD
OF PROCEEDINGS.

25 _____
 /s/
 CHRISTINA L. BICKHAM, CRR, RDR